

Drug Intelligence Brief



DRUG ENFORCEMENT ADMINISTRATION
INTELLIGENCE DIVISION

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MONEY LAUNDERING IN COSTA RICA

Financial Overview

Costa Rica has recently been placed on the United States Department of State's list of countries of primary concern for money laundering. Costa Rica's highly advanced financial system and the limited amount of safeguards in the banking sector make the country an attractive location for carrying out money laundering activities.



Money Laundering Methods

Couriers

Bulk cash smuggling remains a problem in Costa Rica. Seizures of several thousand dollars have occurred throughout the past year at Costa Rican airports and maritime ports. The "mules", or couriers, involved with the money seized, however, are usually not prosecuted because it is difficult to prove definitively that the funds they are carrying are the proceeds of criminal activity. DEA reporting indicates that Colombian traffickers are using couriers to bring millions of dollars in drug proceeds to Costa Rica and deposit those proceeds into banks. The money is then wire transferred to bank accounts in the United States. Once this has been accomplished, associates of the Colombian traffickers utilize Automatic Teller Machines and debit cards in Colombia to withdraw the funds from their U.S. accounts.

Smurfing

When utilizing banks to launder drug proceeds, it is necessary to circumvent an institution's reporting requirements. One way of accomplishing this is by conducting numerous deposits under the US\$10,000.00 cash transaction reporting threshold. This method is known as structuring or "smurfing." Smurfing is a relatively common occurrence, but does not represent high-level money laundering activity, which is accomplished almost exclusively through wire transfers. Banking officials stated that launderers are aware that large wire transfers do not have to be reported to *Superintendencia de Entidades Financieras* (SUGEF); (the reporting requirement does not extend beyond cash transactions). Launderers have been taking full advantage of

the opportunity that this gives them to move large amounts of money without alerting law enforcement officials.

For example, Mexican traffickers are wiring money to themselves in Costa Rica, then traveling to Costa Rica to withdraw the cash, and fly it back to Mexico. In addition, millions of dollars are being transferred in and out of accounts that never previously contained any more than US\$20. Another example of a method favored by money launderers occurs when an individual registers multiple companies and opens accounts for each at a Costa Rican bank. The individual also opens an additional, unrelated account at the same bank. Money is then almost immediately transferred into the established company accounts. It is then transferred to the aforementioned unrelated account and from that account to an account in Panama.



Real Estate

DEA reporting reveals that narcotics traffickers are laundering drug proceeds through the purchase of real estate in Costa Rica, in addition to the movement of funds through Costa Rican bank accounts and offshore trusts.

Casinos

Gambling is legal in Costa Rica and there are many traditional casinos that are licensed by their respective municipal governments. With no legislation in place in Costa Rica to regulate these establishments and the ease of representing the laundered funds as casino winnings, money launderers are able to take advantage of the aforementioned services without fear of detection.



There are approximately 50 online casinos and 60 sports books (betting on sporting events, the Oscar winners, political events, etc.) hosted in Costa Rica. These gambling companies will provide a relatively simple means for money launderers to move funds in the guise of gambling winnings, either through the use of regular bank accounts, smart cards, or e-cash. A *Sala Cuarta* (the Costa Rican Supreme Court) decision in 1996 stated that servers are neutral when connecting to the internet and, therefore, are not in conflict with any existing Costa Rican laws. According to public source information, “as long as Costa Rican citizens cannot connect and gamble, which is accomplished through firewalls/filters eliminating Costa Rican Internet addresses, there is no ‘presence’ or ‘activity’ in Costa Rica to regulate.” Costa Rica is also attracting virtual casinos due to the low start-up costs involved. According to an article in the June 2000 edition of the magazine *Latin Trade*, “...it costs less than \$10,000 in government fees to launch an online gaming venture. In the other popular destination—the Caribbean—official start-up fees can run as high as \$250,000, in addition to hefty annual fees.”

Construction Projects

Drug proceeds are being laundered through investments in construction projects, hotels, restaurants, shopping malls, and product assembly plants. In fact, some of the largest malls in Costa Rica were built not through the use of bank loans, but rather through direct investments. Costa Rican law enforcement does not currently have the resources to uncover the origin of these investments. Additional information can be obtained at www.ogd.org.

Drug Law Enforcement Efforts



The investigation of money laundering offenses in Costa Rica is, for the most part, handled by three government entities: SUGEF, *Instituto Costarricense Sobre Drogas* (ICD), and the Judicial Investigative Police (OIJ). SUGEF and ICD collect and analyze intelligence (suspicious activities reporting from banks, companies, etc.), and initiate money laundering cases. Under ICD is the Financial Intelligence Unit (*Unidad de Analisis Financiero*, or FIU), that investigates money laundering offenses. The developed, actionable intelligence is then passed to members of the OIJ's *Sección de Delitos Financieros* (Financial Investigations Section), which carries out the investigation against the targeted individual(s) involved in money laundering offenses.

Costa Rica's FIU is comprised of seven intelligence analysts, who handle major financial investigations. The FIU has been involved in recent money laundering investigations with the U.S. Internal Revenue Service (IRS), Federal Bureau of Investigations (FBI), and the Drug Enforcement Administration (DEA) offices in Costa Rica. By law, ICD and the FIU receive Suspicious Activity Reports (SARs) submitted to the Costa Rican Government by the compliance officers of all Costa Rican banks. ICD maintains close relationships with INTERPOL, the Financial Action Group of the Caribbean (GAFIC), the Financial Crimes Enforcement Network (FinCEN), and the El Paso Intelligence Center (EPIC). The ICD and the FIU cooperate fully with United States law enforcement and are considered to be very competent and professional.

Before being sent to the ICD, all SARs are sent to Costa Rica's SUGEF, which is responsible for overseeing all regulations related to banking and financial institutions. SUGEF is also responsible for conducting inspections and assuring compliance with money laundering legislation (Law # 7786). SUGEF conducts the initial review of the SARs it receives from financial institutions, and, if warranted, then forwards the reports to the ICD/FIU to conduct background checks and initiate money laundering investigations.

Efforts of the Costa Rican law enforcement community to effectively investigate and prosecute money laundering cases is severely hampered by the lack of adequate funding and manpower to handle complex, international cases, as well as by a lack of international cooperation. The ICD/FIU section has four analysts and a supervisor to collect and analyze financial intelligence and the OIJ's Financial Intelligence Unit has two law enforcement officers, an analyst, and two analysts dedicated solely to the investigation

money laundering offenses. Though this is a marked improvement over the past in which a sole officer was assigned to combat money laundering in the country, the magnitude of the money laundering problem in Costa Rica makes the number of persons assigned to these groups inadequate to effectively curb the laundering of illicit funds.

The *Ley de Psicotropicos* and the *Ley de Intervenciones Telefonicas* allow the use of pen registers and wire taps in carrying out kidnapping, drug, and money laundering investigations. Despite these laws and other supporting legislation, the job of the anti-money laundering official is incredibly difficult due to the necessity of finding a drug nexus, and to the lack of anti-conspiracy legislation. According to Costa Rican law, a person must know that he/she is involved in the legitimization of capital for narcotics traffickers. This knowledge is very difficult to prove. Police are further constrained by Costa Rican law in that they are prohibited from participating in the commission of a crime and, therefore, cannot carry out undercover operations. If a case is proven by police, the legislation is such that only the person who actually carries out the laundering of the funds will be punished. Those who are involved, but did not commit the overt acts, are not punishable under Costa Rican law. Because of this legislative oversight, often the head of a money laundering organization, responsible for ordering the commission of the overt acts but not directly participating in their commission, will escape prosecution.

In addition, a lack of international cooperation, a lack of funding, and a lack of anti-money laundering training (especially for prosecutors) exists in Costa Rica. Money laundering investigations are complex and time-consuming. In order to effectively combat launderers, investigators must be able to obtain information from abroad. The resources of the Costa Rican Attorney General's Office are so scant that prosecutors "cannot make international calls, much less travel abroad to follow up on cases they are working on." Obtaining information from foreign countries is incredibly time-consuming. It is so time-consuming, in fact, that often, by the time information arrives from foreign sources, it is out-of-date and, therefore, effectively useless to Costa Rican law enforcement authorities. Prosecutors have little time to devote to money laundering cases as they have literally hundreds of cases to handle.¹

In order to increase efforts to prevent money laundering, the Costa Rican Chamber of Banks and Financial Institutions (CBF) opened the Central American Banking Academy in San Jose, Costa Rica on April 4, 2002. The Academy's purpose is to offer training to private sector entities with regard to the prevention of money laundering and other financial crimes. The Academy's program contains the following components:

- Introduction to Money Laundering
- Legal Considerations in Money Laundering Cases
- Know Your Client
- Suspicious Transactions and Challenges Imposed by a Financial World in Transition
- Personnel Training, Reporting, Auditing Systems, and Compliance Officers
- The Establishment and Administration of a Money Laundering Prevention Program

¹ *Al Dia*, December 6, 1999.

In March 2001, the Criminal Investigation Division (CID) of the IRS carried out an undercover sting operation, which revealed that Costa Rica was the base of a ring of tax evaders and money launderers. In the portion of the case that was carried out in Costa Rica, six people, including two fugitives, were charged with conspiracy to launder US\$470,000. These funds were laundered through offshore trusts, which had been used to hide millions of dollars. This was done in an effort to avoid the payment of U.S. taxes. In June 2002, a California jury convicted the ring's two leaders, Wayne Anderson and Richard Marks. Seven associates of Anderson and Marks have been convicted or pleaded guilty to money laundering and tax-related offenses. Another of the conspirators is in jail in Costa Rica pending extradition.

On July 4, 2002, Costa Rican law enforcement authorities, in conjunction with the Royal Canadian Mounted Police (RCMP), raided the San Jose offices of two *casa de cambio* (money exchange house) operators and the home of one of the businessmen, Osvaldo Villalobos, whose partner and brother is named Luis Enrique Villalobos. The Villalobos are generally referred to as "The Brothers." Nearly US\$7 million was frozen in the Villalobos brothers' bank accounts. On October 14, 2002, Casa de Cambio Ofinter, S.A., closed down, unable to operate with its funds frozen. In November 2002, Osvaldo Villalobos was arrested in Costa Rica and charged with fraud. His brother, who has disappeared, is also wanted on fraud and other charges. The aforementioned raids were part of a 3-year RCMP drug investigation, which produced evidence that a now-deceased Canadian drug trafficker laundered approximately US\$300,000 through The Brothers' Casa de Cambio Ofinter, S.A. The RCMP investigation has led to eight arrests and the seizure of nearly 1,300 pounds of cocaine.²

Legislation

- Costa Rica ratified the 1988 United Nations (U.N.) Convention in 1991. Many of the recommendations of the 1988 U.N. Convention were put in place with the implementation of the 1991 Law of Narcotics.
- The *Ley Organica del Banco Central de Costa Rica* (Costa Rica's Central Bank Law) lifted all controls on the sale and purchase of foreign currency in 1995. (SOURCE: www.ogd.org)
- Costa Rica, in 1995, established a national Money Laundering Commission, which is comprised of officials from government ministries and the banking sector.
- The Legislative Assembly established a special narcotics committee to investigate drug-related corruption in March 1997.
- A new criminal procedures code became effective January 1998.
- The Government of Costa Rica, in 1998, signed and ratified the first

² "Blissfully Ignorant Investors Become Rich in Costa Rica," *New Orleans Times Picayune*, July 28, 2002 and "Retirement Dreams Fall Prey to Schemes in Costa Rica," *Wall Street Journal*, December 13, 2002.

comprehensive, six-part Maritime Counterdrug Agreement between a Central American country and the United States. This agreement formalizes the mutually beneficial and cooperative joint law enforcement relationships between the two countries.

- On April 29, 1998, the Costa Rican Government authorized the granting of concessions to businesses to take wagers on all sports in person, via telephone, or via the Internet.
- Costa Rica passed legislation that strengthened the country's previously enacted anti-money laundering legislation, and, in May 1998, established a FIU.
- In May 1999, Costa Rica joined the Egmont Group, an alliance of 30 nations, which have centralized Financial Analysis Units to combat money laundering.
- Costa Rica participates in the Caribbean Financial Action Task Force or CFATF.
- Drug-related money laundering is a criminal offense in Costa Rica. In order to successfully prosecute this crime, however, prosecutors must prove that a defendant was aware that the funds were garnered through narcotics trafficking.
- Although the practice of bank secrecy is generally adhered to in Costa Rica, courts can order national banks to reveal information regarding specific accounts.
- Costa Rican law requires that banks maintain records and file reports disclosing information regarding large cash transactions, as well as suspicious transactions.
- Legislation is in place that facilitates both the freezing and the seizing of assets.
- Costa Rica has signed no bilateral agreements agreeing to share the assets acquired through successful money laundering investigations. Costa Rica and the United States did, however, approve an asset-sharing program; the specifics will be decided on a case-by-case basis.
- Costa Rican law stipulates that all travelers must declare the amount of currency they are bringing into, or taking out of the country, if the sum exceeds one million colons (equivalent to approximately US\$4,500).
- Costa Rica has an information-sharing agreement in place with the Government of Colombia. The agreement promotes cooperation with regard to the suspicious financial transactions associated with money laundering.
- In December 2001, the Costa Rican legislature passed the new Law on Narcotics, Psychotropic Substances, Non-Authorized Drugs, Legitimization of Proceeds, and Related Activities (Law #8204). Among the many changes

made by this law are the following advancements related to money laundering:

- The criminalization of money laundering with predicate offenses other than drug trafficking (e.g., terrorism);
- Revised distribution of confiscated funds and asset seizures;
- The authorization of information sharing and cooperation between the FIU and its foreign counterparts; and
- The establishment of the ICD, which unites three pre-existing agencies; the *Centro Nacional de Prevencion contra Drogas* (CENDARO), the *Ministerio de Salud Seccion de Precursores/ Quimicos*, and the *Centro de Inteligencia Conjunto Anti-Drogas* (CICAD). Costa Rica's FIU is under CICAD and is now, therefore, part of the ICD.

Proposed Legislation

At this time there are no reports with regard to proposed anti-money laundering legislation for Costa Rica.

Outlook

The money laundering laws in Costa Rica have changed in order to more effectively combat the concealment and laundering of illicit funds through Costa Rica's financial sector. Changes must be made to banking regulations in order to ensure compliance with existing anti-money laundering laws. In addition, the anti-money laundering legislation that is in place now should be strengthened with the addition of a conspiracy law. Although the new antidrug law is a vast improvement over the legislation utilized by Costa Rica in the past, the commitment by Costa Rica of the funding and manpower needed to truly combat money laundering in the country has yet to be seen.

This report was prepared by the DEA Intelligence Division, Office of Investigative Intelligence, Worldwide Investigative Intelligence Section, Financial Investigative Intelligence Unit. This report reflects information received prior to January 2003. Comments and requests for copies are welcome and may be faxed to the Intelligence Production Unit, Intelligence Division, DEA Headquarters, at (202) 307-8726.